barge for an excursion, or where they are using a team for their own pecuniary profit, not for that of their employer, in moving furniture.[3] In such an undertaking each is authorized to act for all with respect to the means employed in executing the common purpose.[4] Each, as principal, has a corresponding right of control and direction. From this community of interest and control it may easily and justly follow that one of the participants impliedly assumes a liability to third persons for the negligence of his fellows, and at the same time a disability to sue for injuries to which they have contributed.[5] The sole basis for imputed negligence so called would then seem to be some such privity as that existing between principal and agent, one dependent upon an express appointment or upon an appointment implied from such an interest and control as may properly make one responsible for the negligent acts of another.[6] In Michigan, although contributory negligence is still imputed to the ordinary gratuitous passenger, in line with the now overruled English case of Thorogood *v.* Bryan,[7] a recent decision in that jurisdiction, recognizing that such imputation of negligence is founded upon a "fiction" of agency, refuses to impute to a child the negligence of its driver, for the excellent reason that an infant is incapable of having an agent. *Hampel* v. *Detroit, etc., Ry. Co.*, 100 N. W. Rep. 1002. Consistency would appear to demand that the adult passenger in Michigan and wherever contributory negligence is imputed be liable directly, upon this doctrine of agency, for his driver's negligence. These two results, the liability and the disability, seem inseparable in any case of imputed negligence. It is difficult to conceive of such a privity as will bring about the one and not the other.[8] If the negligence of A is to be treated as the negligence of B it must be so treated for all purposes.

The majority of courts, however, fail to find any privity or agency in the usual case of a gratuitous passenger and his host or driver.[9] They are coming to treat in the same way the gratuitous passenger and his host, the paying passenger and his carrier, and the infant and his custodian. Consequently in each of these cases where they find no such privity as should directly tax the one for the other's fault he is not indirectly taxed by means of imputed negligence for the other's contribution.

FOREIGN STATUTES OF LIMITATION. — The courts of one state will enforce a right acquired in another state, but in so doing will apply their own law of remedies. Since a statute of limitations is generally held to affect the remedy and not the right, in a suit on a right acquired in another state, the statute of limitations of the forum will be applied.[1] If, however, in the jurisdiction in which the right is acquired, the rule of law is that the statute of limitations destroys the right as well as the remedy, no action will lie in another jurisdiction after it is barred in the jurisdiction in which

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[3] Cass *v.* Third Ave. R. R. Co., 47 N. Y. Supp. 356.
[4] See Koplitz *v.* City of St. Paul, 86 Minn. 373.
[5] Stroher *v.* Elting, 97 N. Y. 102; see Elyton Land Co. *v.* Mingea, 89 Ala. 521, 529.
[6] The Bernina, L. R. 13 App. Cas. 1, 16.
[7] 8 C. B. 115.
[8] Beach, Contrib. Neg. § 103 *et seq.*
[9] Union, etc., R. R. Co. *v.* Lapsley, 51 Fed. Rep. 174; Cunningham *v.* City, 84 Minn. 21. *Contra*, Prideaux *v.* City, 43 Wis. 513.

[1] M'Elmoyle *v.* Cohen, 13 Pet. (U. S.) 312.

the right arose.[2] When suit is allowed upon a foreign right, although the foreign statute of limitations has run against it, on the ground that the statute affects the remedy only, one feels that justice has been sacrificed to a theory. Enactments have therefore been passed in most states refusing a remedy in their courts in such a case. The objection to a suit of that kind is especially forcible when the right arises solely under a statute of the foreign jurisdiction. In that case, the courts, without the aid of legislation, have generally made a distinction. If the statute giving the right contains a proviso that action on the right must be brought within a given time, it cannot be brought after that time in any jurisdiction.[3] This provision of limitation is regarded as a condition or qualification of the right, determining its nature and extent, and affecting the right into whatever court it is taken. Such a provision of limitation need not be contained in the same section of the special statute,[4] but it must be a special limitation upon the action or class of actions contained in that statute, and not merely a limitation applying to the whole body of actions generally.[5] Where, however, a statute gives a right under certain circumstances, which circumstances have occurred, and thereafter a retroactive statute is passed limiting the time within which any suit may be brought, it can hardly be said that this limitation, though made applicable to the right in question, is a qualification of that right at the time it came into existence. However, it has been recently decided that in this case, also, the *lex loci* will govern. *Davis* v. *Mills*, 194 U. S. 451. The court reached its decision by holding that the limitation was of the kind which destroyed the right. Had the right in question been a common law right, and the statute of limitations a general one, the court would undoubtedly have held that the limitation affected not the right but only the remedy. Since it could not be regarded, however, as a qualification of the right when created, there seems no logical reason for holding the reverse of this merely because the right arose under statute, and the limitation was made particularly applicable to it. Though the result is illogical, it nevertheless strikes one as desirable that recovery should be forbidden on a statutory right which is expressly barred by statute in the state which gave it. Having in mind the distinction already made in regard to statutes containing a proviso of limitation, the court may have felt that the present further step presented no very serious difficulty. The result of the authorities, therefore, would seem to be that in all cases where a statute gives a right unknown to the common law, and either in this statute or elsewhere a special period of limitation is placed for that right or class of rights, that limitation will be enforced wherever suit is brought.

RIGHT OF THE DEVISEE OF A MORTGAGED ESTATE TO CLAIM EXONERATION OUT OF PECUNIARY LEGACIES. — In marshalling the assets of a decedent for the payment of debts and legacies the rule that the personal estate is the natural primary fund for the payment of debts contracted by the deceased is universally recognized.[1] Some limitations to this rule have

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[2] Perkins *v.* Guy, 55 Miss. 153.
[3] Pittsburg, etc., Railroad Co. *v.* Hine, 25 Oh. St. 629.
[4] Boyd *v.* Clark, 8 Fed. Rep. 849.
[5] O'Shields *v.* Georgia Pacific Railway Co., 83 Ga. 621

[1] 2 Woerner, Am. Law of Administration 1093.